

ATTORNEY DOCKET NUMBER: 2002834-0232 (Bacterial Delivery DIV2)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Caplan et al.
Serial No.: 10/728,323
Filing Date: December 4, 2003
Title: MICROBIAL DELIVERY SYSTEM

Examiner: Huynh
Art Unit: 1644

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Certificate of Mailing	
I certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450	
July 5, 2005	<i>Kathy Hart Gagnon</i>
Date	Signature
<i>Kathy Hart Gagnon</i>	
Typed or Printed Name of person signing certificate	

TRANSMITTAL LETTER

Enclosed please find the following documents:

- (1) Response to Restriction Requirement (2 pages);
- (2) Petition for Extension of Time (1 month) (1 page);
- (3) Check in the amount of \$60.00 (small entity); and
- (4) This return postcard.

Please charge any additional fees that may be required, or credit any overpayment, to our Deposit Account No. 03-1721.

Respectfully submitted,

Dated: July 5, 2005

C. Lyon

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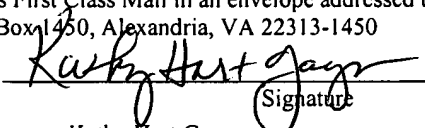
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RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

This paper is filed in response to the Restriction/Election Requirement mailed May 18, 2005. The due date for response was June 18, 2005. Applicant is filing herewith a petition for a one (1) month extension of time from June 18, 2005 to and including July 18, 2005 to reply to the Restriction Requirement. Thus, Applicant respectfully submits that the filing of this response on July 5, 2005 is timely.

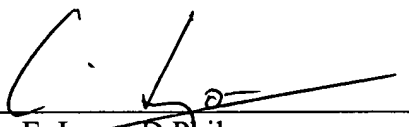
Responsive to the Restriction Requirement, Applicant hereby elects Group 1 and submits that pending claims 34-36 and 38-44 should therefore be examined together in this case.

Despite making this election without traverse Applicant respectfully submits that the Examiner's Restriction Requirement was unjustified. Indeed, related generic claims have already been extensively searched and examined by the same Examiner in parent application U.S. Serial No. 09/731,375. Applicant has provided the Examiner with a number of prior art references in the parent application (and again in this divisional filing). Thus, the searching burden on the Examiner was slight, not undue. The fees charged for filing and prosecuting divisional patent applications and then maintaining the resulting patents, place a significant burden on Applicant. It is therefore imperative that any restriction or election requirement be made according to the rules and be clearly supported by the facts.

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